

1 BEFORE THE POLLUTION CONTROL HEARINGS BOARD
2 STATE OF WASHINGTON

3 JIM WYNNE, dba WYNNE
4 ASSOCIATES,

5 Appellant,

6 v.

7 NORTHWEST AIR POLLUTION CONTROL
8 AUTHORITY,

9 Respondent.

PCHB No. 89-23

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

10 This matter, the appeal of a civil penalty of \$250 for burning
11 prohibited materials in an outdoor fire, came on for hearing before
12 the Pollution Control Hearings Board, Wick Dufford, presiding, on
13 April 4, 1989, in Mt. Vernon, Washington. Board members Judith A.
14 Bendor and Harold S. Zimmerman have reviewed the record.

15 Jim Wynne represented himself. William Nielsen, attorney at law,
16 appeared for the Northwest Air Pollution Authority. The proceedings
17 were recorded by Rebecca Winters, court reporter.
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1 Witnesses were sworn and testified. Exhibits were admitted and
2 examined. From the evidence presented, the Board makes the following

3 FINDINGS OF FACT

4 I

5 Appellant Jim Wynne operates an antique mall at 4744 Pacific
6 Highway, north of downtown Bellingham, Washington, near the I-5
7 freeway and close to the city's airport.

8 II

9 Respondent Northwest Air Pollution Authority (NWAPA) is a
10 municipal corporation with responsibility for carrying out a program
11 of air pollution prevention and control in a multi-county area which
12 includes the site of the events at issue.

13 III

14 Section 501.22 of NWAPA's regulations makes it unlawful for any
15 person to cause or allow any outdoor fire

16 Containing prohibited materials, including but not
17 limited to, rubber products, asphaltic products,
18 tires, crankcase oil, petroleum wastes, plastics,
garbage, dead animals or other like material.

19 This provision closely approximates the terms of RCW 70.94.775, a
20 section of the Washington Clean Air Act which lists materials
21 prohibited in outdoor fires.

22 IV

23 At about 12:50 p.m. on December 8, 1988, the Bellingham Airport
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26 FINAL FINDINGS OF FACT,
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1 control tower requested the airport fire department to investigate a
2 large black cloud of smoke reported by a pilot to be north of the
3 Runway 16 approach. The airport fire chief and a firefighter
4 responded in a fire truck and quickly located the source behind
5 Wynne's antique mall. Arriving on the scene, they found what they
6 described as an unattended fire, burning plastics, furniture,
7 appliances and general garbage and trash. They noted that about half
8 of the burn pile was brush, but stated that the smoke was very black
9 and thick.

10 Shortly after the airport fire personnel arrived at the scene,
11 they were joined by the battalion chief and firemen from the Marietta
12 Volunteer Fire Department (Whatcom County Fire Protection District No.
13 8). The Marietta battalion chief stated he would have his personnel
14 put out the fire, and the airport crew returned to duty at the airport.

15 The Marietta battalion chief described the fire as producing a
16 large column of black smoke which rose vertically and then broke off
17 to the west toward the airport's flight pattern. He described the
18 burning pile as containing both brush and miscellaneous debris
19 including plastics and furniture.

20 He said the burn pile was about 20 feet by 15 feet and 4 to 5
21 feet deep. About a third of it was involved in the fire and the fire
22 had penetrated to the full depth of the pile. After the initial blaze
23 was knocked down, he directed his fire fighters to come in on the pile
24 from the downwind side in order to get at the fire which persisted in
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1 the depths of the pile. "Fearing noxious fumes from the materials
2 being burned, he instructed his personnel to put on protective
3 breathing apparatus.

4 During the fire suppression operation some of the fire department
5 personnel engaged in pulling debris away from the vicinity of the burn
6 in order to prevent it from becoming involved.

7 V

8 At about 1:30 p.m. on December 8, 1988, NWAPA's inspector
9 observed a plume of heavy, dark, thick smoke as she was driving along
10 I-5. When she arrived at the scene about five minutes later, she
11 found the Marietta Fire Department at work extinguishing the blaze.

12 By then the smoke had been reduced and had changed to whitish
13 grey. She observed smoke from a large pile containing furniture,
14 clothing, garbage, box springs and vegetation. She took a number of
15 photographs which were admitted into evidence.

16 VI

17 On January 12, 1988, NWAPA issued a Notice of Imposition of
18 Penalty to Jim Wynne, assessing a fine of \$250 for the burning which
19 occurred on December 8, 1988. Wynne filed a notice of appeal with
20 this Board on February 9, 1989.

21 VII

22 Wynne does not dispute that the burning took place on his
23 property and essentially under his direction on the date in question.
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1 Neither does he deny that at least some prohibited materials were
2 burned.

3 His chief concerns were that he felt that the magnitude of the
4 event had been exaggerated and he was upset by what he believed to be
5 the over-reaction of the Marietta Fire Department. He introduced a
6 number of his own photographs into evidence.

7 He said the original burn pile had been assembled in the summer
8 and that, in the interim, he had been waiting for advantageous wind
9 and weather conditions for burning. The various items of garbage, old
10 furniture, plastics and other debris on site had all, he said, been
11 hauled in by others attracted by the brush pile in an area of open
12 access. He advised that he has now fenced the area to prevent
13 unauthorized dumping.

14 Wynne also stated that much of the prohibited material had been
15 pulled out of the fire pile by his men before the burn, and that most
16 of the like material stacked in the vicinity was not really in the
17 burn pile and not in danger of catching fire. He felt the fire was
18 adequately controlled.

19 VIII

20 We find that Wynne did, in fact, cause or allow an outdoor fire
21 on December 8, 1988, which contained material which may not lawfully
22 be burned.

23 He admits to earlier contacts with NWAPA (including the
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1 inspector involved in this case) in which open burning regulations
2 were explained. We are unconvinced by his efforts to downplay the
3 seriousness of the events in question.

4 From these Findings of Fact, the Board comes to the following

5 CONCLUSIONS OF LAW

6 I

7 We conclude that the fire on the grounds of Wynne's antique mall
8 on December 8, 1988, violated NWAPA's Regulation Section 501.22.

9 II

10 Under RCW 70.94.4311(1) a civil penalty was properly imposed.
11 The statute provides for penalties of up to \$1000 per day for each
12 violation. Under all the facts and circumstances, the penalty
13 assessed here, far from being unreasonable, appears very moderate.

14 From these Conclusions of Law, the Board enters this
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ORDER

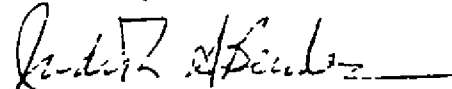
The penalty is affirmed.

DONE this 8th day of May, 1989.

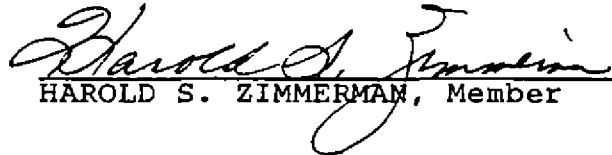
POLLUTION CONTROL HEARINGS BOARD



WICK DUFFORD, Chairman



JUDITH A. BENDOR, Member



HAROLD S. ZIMMERMAN, Member

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